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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,388	05/03/2001	Isabelle Afriat	205731US0	6489

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[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1616

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/847,388	AFRIAT, ISABELLE
	<b>Examiner</b>	<b>Art Unit</b>
	Mina Haghigian	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 June 2002.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-45 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-45 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over (JP 07196440) in view of Castro et al (6,306,407).

JP '440 teaches skin cosmetics comprising short fibers which are excellent in water resistance and oil resistance, and provide good conditions of stability and application to the skin. Such cosmetics give a **smooth touch** to the skin with no greasiness. These short fibers, in the length of 0.1 to 5 mm can be synthetic or natural fibers such as cotton, sheep wool, silk, rayon, acrylic type, a polyamide type etc. Since the polyamide type is excellent in usability, it is the most preferable type (page 5/22, items 0003 and 0004).

JP '440 also discloses that the short fibers are in the range of 0.1 to 20 deniers, and most preferred are 0.1 to 1.2 deniers. The amount of short fibers is 0.1 to 10 wt% (page 6/22, items 0005 and 0007).

JP '440 teaches that the composition may contain other ingredients such as oil, moisturizer, antioxidant, a chelating agent, a **pigment**, an **antiseptic**, etc. Also the examples show that the composition may be in the form of an emulsion, **foundation** or cream. The methods of preparation for such compositions are also included (pages 6/22 through 14/22). JP '440 lacks teachings on specific active agents.

Castro et al teach a cosmetic or pharmaceutical composition for topical application to the skin which comprises a **fibrous** component for promoting the transfer of moisture and oil and removal of unpleasant and unwanted moisture from skin, especially the facial skin. The fibrous component can include wicking fibers, evaporating fibers, or a combination of both. The fibrous component contains wicking fibers to facilitate the transfer of moisture and oil from the surface of the skin to the composition. The composition, when applied to the skin provides a layer of fibers having moisture and oil regulating properties. The compositions maintain the natural and fresh appearance of the skin even during exercise and other hot and humid environmental conditions (col. 2, lines 37-64).

Castro teaches that the fibers can be selected from the group consisting of polyethylene, rayon, cotton, wool, silk and blends thereof. The nylon fibers have a denier from about 0.8 to about 20.0 (col. 3, lines 25-52). The fibrous component is present in an amount of from about 0.005 to about 1.0 percent by weight, and preferably from about 0.01 to about 0.5 percent by weight. The shape of the fibers can be any assortment of shapes such as round, bean, bone, oval, irregular, etc. But most preferred shape is round. The fibers have a length from about 0.01 to 0.25 inches. The composition also includes a compatible carrier (col. 4, lines 1-30).

Castro discloses a method of wicking moisture and oil and evaporating moisture off of the skin comprising applying to the skin the cosmetic or pharmaceutical composition which comprises fibrous component. The benefit of adding fibers to cosmetic or pharmaceutical compositions can be obtained in any type of makeup

composition, for example, **foundations**, eyeshadows, **blushes**, **powders**, lipsticks, etc. also disclosed is the benefit of non-make up compositions such as treatment products, wherein the product is applied to the skin for a therapeutic purpose, but also has the added advantage of controlling oil and moisture on the skin (col. 5, lines 13-33).

Castro discloses additional preferred components of the cosmetic compositions including one or more pigments, fillers, metal stearates, oil-soluble antioxidants, chelating agents, sunscreens such as **zinc oxide**, **oil-soluble actives** such as tocopherol and its derivatives, retinol and its derivatives, and the like (col. 5, line 51 through col. 6, line 38).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the composition of JP '440 adding specific active agents such as zinc oxides, as taught by Castro et al with the reasonable expectations of obtaining a composition which provides the user a non-sticky and easy to use product with complimentary benefit of treating excess oil and covering imperfections of the skin.

#### ***Response to Arguments***

Applicant's arguments filed 06/27/0 have been fully considered but they are not persuasive.

Applicant argues that neither Castro nor JP '440 disclose compositions containing "active agents for treating greasy skin". However, while neither references specify addition of an agent for treating greasy skin, both references indicate the

addition of other agents, which are of the agents listed in instant claim 2. JP '440, in examples such as example 3, discloses the addition of antiseptic, which reads on the chlorhexidine of claim 2, and Castro clearly indicates the addition of zinc oxide which reads on the zinc salts of claim 2.

Applicant argues that Castro simply states that "oil soluble actives such as tocopherol and its derivatives or retinol and its derivatives" could optionally be added to the fiber-containing composition. Applicant further argues that vitamins such as vitamin A and E are not suitable "active agents for treating greasy skin". However this argument is not persuasive because firstly, as mentioned above, Castro's list of optional components includes zinc oxide, antioxidants and oil-soluble actives. This list, with or without tocopherol and retinol meets the limitation of claim 2. Secondly, most agents listed in claim 2, such as acetaminophen, ibuprofen, naproxen, lidocaine, etc are also not shown or proven to be suitable for treating greasy skin.

Applicant argues that neither of the references disclose or suggest that compositions containing fibers and an active agent for treating greasy skin could be used to change the appearance of skin, let alone fade out skin relief defects such as microreliefs and pores. However, JP '440 discloses that the fibrous composition provides a smooth touch for the skin, and Castro discloses that the fibers give the composition a natural look on the skin similar to that of the natural ultrafine hairs that exist on the surface of the skin. Moreover both references disclose that the fibrous composition can be in a foundation form, which is clear to one of ordinary skill in the art, changes the appearance of the skin and covers the skin imperfections such as color

variations, pores and fine lines. Foundations are also known for giving a matte appearance to the skin.

Applicant argues that the references did not teach or suggest the light scattering effect or the covering index of the fibrous compositions. While applicant is correct, these are inherent properties of the composition and the mere fact that the references did not disclose them does not provide patentability support in the instant application. The table on page 12 of the specification of the instant application shows that at 10% fiber addition the covering index of the composition is 0.29 which is within the limits of claims 35-45. Both references suggest 10% fiber in their compositions.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mina Haghigatian whose telephone number is 703-308-6330. The examiner can normally be reached on core office hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0198.



MICHAEL G. HARTLEY  
PRIMARY EXAMINER

Mina Haghigatian  
August 8, 2002